

**Revisiting Informal Justice:
Restorative Justice and Democratic Professionalism**

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Accepted by Law & Society Review, June 3, 2003

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Debates over informal or popular justice recur periodically in sociolegal scholarship. The topic received extensive discussion in the 1980's, but much less in the 1990's. While most U.S. scholars were focusing elsewhere, however, the practice of informal justice has continued to grow. A type of informal justice known generally as "restorative justice" is spreading rapidly in the arena of criminal justice. In the latter half of the 1990's the U.S. Department of Justice sponsored several conferences on restorative justice and began funding pilot programs (Department of Justice, 1998). According to one of its main advocates, Mark Umbreit, all fifty states have restorative justice programs in some stage of development (2001, xxxvi). Nor is interest limited to the United States. Umbreit (2001, xlv) counts over a thousand programs in sixteen other countries. In 1999 the United Nations' Economic and Social Council passed a resolution endorsing the principles of restorative justice (United Nations 1999). With this large presence in legal practice, restorative justice deserves the attention of sociolegal scholars to see whether evolution in practice and/or theory reveals new insights about informal justice.

One of the major criticisms of informal justice in the 1980's was that it tended to increase rather than decrease state control over minor disputes (Abel 1982; Harrington 1985), but subsequent sociolegal scholarship questioned the implied dichotomy between state and community control (Matthews 1988; Fitzpatrick 1988). We focus here on the role of professionals as intermediaries between citizens and the state. Attending to the role of professionals in restorative justice programs is especially important because

restorative justice theory calls for criminal justice to be turned over to “the community” with little apparent need at all for professionals (Alford 1997). We conclude that such a prescription is naïve, but that professional involvement also does not have to mean state domination and the exclusion or cooptation of citizens. A theory of democratic professionalism suggests an alternative account of the zone between total control by either state or community that both enriches restorative justice theory and responds to critics of informal justice.

This article begins with a very brief summary of the sociolegal critique of informal justice. It then turns to the intellectual and practical roots of restorative justice. The challenge that restorative justice poses to the role of professionals in conventional criminal justice is summarized and a theory of democratic professionalism introduced. A case study of a restorative justice program in Salt Lake City, Utah, explores how the roles of practicing professionals committed to restorative justice differ from those in the conventional criminal justice process and what greater community involvement means to such professionals. The structure of professional involvement in a restorative justice program in Vermont provides an alternative example of democratic professionalism in action. The conclusion identifies tensions within the theory of restorative justice and discusses ways in which democratic professionalism might inform restorative justice and justify a reconsideration of informal justice.

Informal Justice in Sociolegal Scholarship

During the 1970’s local programs attempting to make access to justice speedier and cheaper began to spread rapidly and in some cases received substantial federal funding from the Law Enforcement Assistance Administration of the U.S. Department of

Justice. This governmentally sponsored informal justice became a major focus of law and society scholarship in the 1980's, and the assessment was overwhelmingly critical.

Works by Abel (1982), Tomasic (1982), Merry (1982 and 1989), Hofrichter (1982a and 1982b), Harrington (1985), Delgado et al. (1985), and others concluded that informal justice extended rather than reduced the net of state social control, failed to live up to its vision of non-coercive resolution, allowed more powerful parties to take advantage of less powerful parties, allowed more room for personal prejudice than formal processes do, and failed to make the courts more efficient for those cases remaining in it. Even non-governmental, community-based programs revealed possible shortcomings such as benefiting the mediators more than the disputants (Merry and Milner 1993). While some of the governmentally sponsored programs did falter, other programs persisted and grew despite the scholarly critiques.

While U.S. scholarship on informal justice dropped off dramatically after the critiques of the early 1980's, by the late 1980's "new informalist" analyses (Pavlich 1996, 708) were already beginning to appear, primarily by British and Australian scholars (Matthews 1988). These scholars developed new critiques but in some cases also tried to salvage informal justice (Matthews 1988; Fitzpatrick 1988; Marshall 1988; Cain 1988; Pavlich 1996; Cobb 1997). A major contribution of the new critics is to bring in an analysis of social control drawn from the work of Michel Foucault. Pavlich (1996, 712) argues that the "old" critics of informalism inappropriately reduced the central question about informal justice to whether it expanded or reduced state control. This implies a naïve dichotomy between state control and voluntary action by unfettered individuals. Instead, according to Fitzpatrick (1988: 190-92), these two domains are mutually

constitutive social fields in which the identity of law relies on the presence of an informal domain and vice versa.

Social control then is not as centralized and top-down as the old critics assumed. In modern liberal societies individuals are shaped by regulatory practices in an intermediate realm Foucault called “governmentality” in areas such as health, welfare, and education. In this realm of governmentality professionals play a crucial role. In their work professionals are under varying degrees of direct state control, but are permitted their privileges of autonomy because their work sustains conditions approved by the state. Power in this realm is diffuse and lacking in accountability. Specifically with respect to informal justice, Matthews (1988: 19) describes this intermediate realm between centralized state power and individual freedom as “a site of struggle over competencies, knowledges, and privileges.”

We find this characterizes well the situation of criminal justice professionals vis-à-vis restorative justice. Restorative justice theory leaves virtually no role for professionals, yet in practice they are deeply involved in restorative justice programs. In many cases, such as the ones we discuss here, professionals have spearheaded restorative justice programs. These professionals are philosophically committed to direct involvement of victims and the broader community in criminal justice and yet are also bound by norms of fairness for criminal defendants. Juggling these commitments leads to a reconstitution of their roles in ways that differ from the norms found in both restorative justice theory and the current criminal justice system.

Restorative Justice in Practice and Theory

Restorative justice attempts to reconstitute the way people think about crime. Restorative justice advocates argue that crime is more importantly a harm committed against individual victims and secondarily against a community than it is a breach of state laws. Repairing this harm is deemed more important than punishing the offender. By minimizing the governmental role in criminal justice and making the victim the central party, restorative justice recasts criminal justice more like civil law. In blurring the distinction between civil and criminal law, restorative justice is like other versions of informal justice, but its activist roots in North America lie in religiously-based critiques of penal practices and its theoretical roots in a critique of dominant theories of criminology.¹

The origins of the restorative justice movement were contemporaneous in time but distant in geography and philosophy from the neighborhood justice centers piloted by the U.S. Department of Justice during the 1970's (Tomasic and Feeley 1982; Harrington 1985). Although neighborhood justice centers had their roots in prosecutors' perceptions of the need for better handling of minor criminal offenses (McGillis 1982, 64), most came to handle minor civil disputes as well as criminal cases. Indeed, some critiques of such programs emphasized their displacement of civil more than criminal procedures. For example, the informal justice movement's multiple ideological projects, identified by Harrington and Merry (1988), addressed concerns more commonly arising in civil litigation, such as backlog and delay and excessively adversarial proceedings between parties who need to sustain ongoing relationships. Other critics of informal justice saw it

as motivated by the growing degree of success by have-not plaintiffs against powerful defendants.

By comparison, while the emphasis on the victim in restorative justice certainly makes it more like civil justice than conventional criminal justice is, restorative justice is firmly grounded in both practice and theory in critiques of criminal justice. Restorative justice practitioners in North America generally trace its roots to programs organized by members of the Mennonite Central Committee working with probation officers, first near Kitchener, Ontario, in 1974, and then in Elkhart, Indiana, in 1978 (Umbreit 2001, xlii-xliii; Van Ness and Strong 1997, 21; Zehr 1990, 158-59). Some also credit the prison reform efforts of the American Friends Service Committee in the 1960s and 1970s as influencing the development of restorative justice (Van Ness and Strong 1997, 22-23).

Several strands of criticism of the contemporary criminal justice system have contributed to restorative justice (Van Ness and Strong 1997, chap. 2). The first is the lack of concern for victims. Victims are typically left out of the criminal justice process entirely, unless the prosecutor wishes to call them as witnesses. Victim advocates have called on the justice system to provide victims with restitution, needed services, and an active role in the process, such as the right to make a statement at the time of sentencing about the impact of the crime (McDonald 1976).

A second strand of criticism that has contributed to restorative justice notes the failure of the conventional process to significantly reduce crime generally and recidivism in particular. Proponents of restorative justice, however, do not look to harsher and/or more certain punishments to deter or incapacitate repeat offenders. They are likely to believe that putting offenders in jails and prisons reinforces more than deters criminality

and fails to provide offenders with the skills they need to successfully reintegrate into communities (Zehr 1990). On the other hand, they also criticize the adversary system for removing from offenders the need to take responsibility for their actions and look instead to John Braithwaite's criminological theory of "reintegrative shaming" (1989), which holds that communities should condemn harmful actions but then reintegrate offenders back into the community.

Victim-offender mediation (VOM) or reconciliation emerged as a reform movement responding to these two perceived shortcomings. VOM brings victims and offenders into face-to-face contact. For victims direct participation is valued because it acknowledges the importance of what happened to them, gives them considerable control over the outcome, and may well be therapeutic in restoring them to their condition before the crime. Offenders are expected to take personal responsibility for their actions, for it is through this that they come to understand the consequences of their actions and have a chance to restore the ruptured relationships. Because the emphasis on taking responsibility for one's actions excludes people who deny they committed the acts in the first place, restorative justice theorists often acknowledge that the theory does not apply to the blame-fixing stage of the criminal justice process (Karp and Clear 2000), which further differentiates VOM from civil alternative dispute resolution.

Restorative justice programs vary considerably in their specifics, but they generally try to maintain the goals of VOM while adding some type of community involvement (Bazemore 1998; Bazemore and Umbreit 2001). Community members are considered indirect parties because they may fear becoming victims themselves in the future, may wish to reaffirm the norms violated by the criminal conduct, and undoubtedly

absorb the financial costs of the insuring against crime and responding to it when it occurs. Moreover, they are often seen as bringing an ability to “connect with” the victim and offender and support them as they try to repair the harm from the crime (Dzur and Olson, forthcoming).

Anti-professionalism in Restorative Justice

An underlying theme in calls for community involvement and victim-offender mediation is the desirability of reducing professional control of criminal justice. In an influential early article, Norwegian criminologist Nils Christie (1977) accuses the state via its lawyers and “treatment personnel” of “stealing” conflicts from the direct parties and taking away not only the victims’ direct compensation, but also the victims’ and their communities’ opportunity for participation, fuller understanding, and norm clarification.

Restorative justice theory often follows Christie’s lead in recounting the historical evolution of criminal justice from individual or family control to state monopoly. Zehr (1990, 101) describes people in medieval Europe as turning to the “judicial option” only when private justice failed. Such public justice was then still entirely at the initiative and in the control of the victim or victim’s family. Gradually, a public investigator became the public accuser, and as governmental power centralized, the state became defined as the victim of the crime and the recipient of fines levied on the offender.

Restorative justice theorists are skeptical of the usual justification of state monopoly: putting the pursuit of justice in public hands avoids private vengeance and the risk of escalation of social violence (Zehr 1990, 98; Christie 1977, 1981). Zehr (1990, 100) describes the pre-state-controlled system as not “private justice” but “community

justice” because “[c]hurch and community leaders often played central roles in negotiating or arbitrating settlements, registering agreements once they were made.”²

While not often explicitly articulated, the implied distinction between “community” and “state” pervades restorative justice theory, just as it did in the early-1980s critiques of informal justice. Zehr (1990, 119) views the post-Enlightenment development of more democratic governments as not blurring this distinction but merely “legitimizing” the state: “If the state represented the will and interests of the public, it was easier to justify defining the state as victim and giving up to the state a monopoly on intervention.”

If the state and community are dichotomized, criminal justice professionals are clearly representatives of the state. Judges, prosecutors, and probation officers are direct employees of the government. Even when not public employees, defense attorneys are considered “officers of the court.” By viewing the victim, offender, and community rather than the state as the central parties in criminal acts, restorative justice theory seems to imply little need for criminal justice professionals at all. Indeed, there is minimal discussion in the restorative justice literature about the nature of the roles that professionals might play in a criminal justice system reoriented according to restorative justice principles (but see Bazemore 1998, 348-53), except for publications aimed specifically at such professionals (Harris and Corbett 1998; Umbreit and Carey 1995; Gay and Quinn 1996).

Notwithstanding this implication in the theoretical literature, in practice a great deal of the initiative for restorative justice programs has come and continues to come from professionals within the criminal justice system. Indeed, one can even present

restorative justice as a program for professional renewal. One article promoting restorative justice to corrections professionals touts its ability to reenergize their original motivations for entering the field: “to promote offender change, to assist crime victims toward wholeness, and to make individual communities safer” (Umbreit and Carey 1995, 2). The least charitable interpretation of professional involvement in restorative justice is that professionals only use the rhetoric of restorative justice to obfuscate the extension of their own control, as the harshest critics of the informal justice movement of the 1970s suggested. Our observations show, however, that the professionals in the restorative justice programs we have studied appear sincerely motivated to hand over at least some power to victims and community members. Nonetheless, such a shift of power does not occur seamlessly or without ambivalence, and doing so certainly creates the need to reconceptualize professional roles as some traditional ones are changed or eliminated.

In the conventional criminal justice system, professional expertise focuses on issues of substantive law, procedural law, and sentencing. Substantive law is important because crime is conceptualized as breaking the laws of the state. Since punishing offenders for breaking these laws is the central goal of the criminal justice system, procedural expertise is essential so that the punishment is imposed fairly. Except in the rare instances when delegated to juries, sentencing decisions are in the hands of judges, attorneys if plea bargained, and/or “treatment personnel,” such as probation and parole officers.

Professional responsibilities in these areas become specialized and routinized. The focus on punishment makes very important the norm of due process for the offender, and this is achieved through specialized roles and standardized procedures. The professionals

each employ their particular expertise to fulfill their designated role. Defense attorneys represent their clients, either in trial or plea negotiations; judges stay neutral, “umpire,” and adjudicate; probation officers assess attitudes, dangerousness and prospects for rehabilitation.

Reliance on roles corresponding to specialized expertise has corollary effects on professionals’ scope of responsibility and standards of accountability. Professional roles are compartmentalized. The professionals’ responsibility is to do their specific duty in the process, according to professional standards of conduct. For example, the attorneys at trial are accountable to do a good job of voir dire and cross-examination and summation. They are not necessarily accountable for the outcome of the individual case, much less whether the offenders reoffend or the victims put their lives back together. While elected prosecutors and judges may at times be held responsible for a community’s general level of crime, the usual standard of accountability is a narrow measure of conviction rate or sentencing severity.

Restorative justice theory, by contrast, eschews professional expertise in substantive law, procedure, or sentencing and envisions different human interactions among the parties. Direct participation by victim, offender, and community is needed because the restoration of violated or ruptured human relationships, not punishing offenders, is the central goal of criminal justice (Zehr 1990). Experts in substantive criminal law are not needed because crime is a matter of violating community norms, which are widely known by definition. With respect to procedure and sanctions, restorative justice theory emphasizes the unique circumstance of each crime and does not assume that the same treatment is appropriate for all. Indeed, formal equality may

reinforce actual inequality (Zehr 1990, 79). Participants relate to each other holistically and fluidly as unique individuals.

With these values and goals, then, is there indeed no role for professionals in restorative justice? Even as harsh a critic as Christie perceives a possible role for professionals as “resource-persons, answering when asked, but not domineering, not in the center” (1977: 12). Christie’s vision, however, assumes a different public from the one we currently see. If the professionals are not now accountable for the overall outcomes in the criminal justice system, neither is the public. By having turned the criminal justice system over to professionals, most ordinary citizens feel there is little they can or should be expected to do about it, even if they are dissatisfied with the level of crime in their community. Thus, even if it is true historically that professionals have “stolen” the community’s conflicts, as Christie argues, there is little current evidence that the community is making vigorous efforts to get them back.

The concept of “democratic professionalism” says that professional expertise can be directed toward facilitating public participation and control (Dzur 2002a and 2002b). Under this idea professionals do not inevitably reduce the sphere of lay or citizen involvement, but share decision making domains rather than monopolizing them as Christie feared (1977: 7). Democratic professionalism suggests a concept of professionalism with different roles and different expertise.

A Theory of Democratic Professionalism

Democratic professionalism steers a middle course between the apolitical view of professions common in mainstream studies of professionalism and the view of radical critics like Christie. Common to mainstream studies is a view of professions as

“trustees” of public interests. Though rarely held in a pure form in sociological descriptions or ethical theories of professional action, the social trustee ideal has played a major role in how sociologists, philosophers, and professionals themselves have understood professions as being different from other economic actors and as having special responsibilities to the larger society.

The social trustee ideal holds that professionals have social responsibilities in addition to their fiduciary and function-specific obligations to their base of clients. To count as a profession, in Talcott Parsons’ foundational account, an occupation must have a sense of such broader responsibility: “a full-fledged profession must have some institutional means of making sure that such competence will be put to socially responsible uses” (1968, 536). In addition to the healing of particular clients, the medical profession contributes to larger social goals such as the cure of disease and other large-scale improvements in health and well-being (Parsons 1968, 536). In addition to defending the rights and advancing the interests of particular clients, the legal profession embodies and upholds the social conception of justice, what Parsons calls “the moral consensus (incomplete as it is) of American society” (1968, 544).³

Social trustee professionalism emerges in the 1860s and is a prominent ideal in the century that follows for both established professions like law and medicine and for newer professions striving for status, like engineers and social workers (Brint 1994, 5). If social trustee professionals represented public interests, however, this representation was at a fairly high level of abstraction. Serving the “community” was not seen as something the community had much of a say in determining.⁴ An economy of trust emerged: professionals earned social trust by performing such general social functions with a high

degree of competence, and they spent it by insisting that they knew best how to govern themselves and establish their own standards of action.

The apolitical image of professional responsibilities to the public presented by the social trustee ideal is strongly challenged by the view of radical critics of the 1970s, such as Foucault and Habermas, who lamented the detrimental effects of “technocratic” professional action in democracies that, to paraphrase Habermas, takes the most critical aspects of public decisions out of the hands of both the voters and the politicians (1971, 63). Far from representatives of the public interest, under this critique professions are seen as impediments to the democratic expression of public interests. Expertise grounded in the methods and language of positivist social science pushes the local knowledge of lay participants out of serious policy arenas.

Nils Christie echoes these themes when he draws attention to professional task monopolization that shrinks the space of democratic authority and immobilizes citizens who might occupy that space (1977). Professions shrink the space of democratic authority when they claim expertise and authority over tasks involved in achieving public purposes like criminal justice that could conceivably be done by lay people, tasks such as crime prevention, trials, and sentencing. Sometimes professionals quite literally shrink the space of participation when they decide public issues off in professional buildings and administrative complexes, far from potential sites of participation.

In addition to taking over public-oriented tasks, professions may immobilize because their sophistication in policing, adjudicating and sentencing makes people less comfortable with relying on their own devices for social order and justice. Further, as critics like Foucault pointed out, individual citizens, social movements, communities, the

“general public” become reflected back to themselves by the professions (Foucault 1980). Professions, along with providing services, mediate relations with selves, other individuals, and groups. Through the mediation of psychologists, lawyers, public administrators, among others, people can lose faith in how capable they are as persons, how capable their neighbors are, and how capable non-professionals are in collective decision making.

The radical critics’ response to technocratic professionalism was to undermine the positivist underpinnings of the alleged expertise of criminologists, policy scientists, and others, and to suggest, where possible, the use of lay dominated forums of public choice. During a period of comparatively high (in comparison to contemporary rates) civic participation as the 1960s and the early 1970s (Putnam 2000), such hope for lay participation did not seem misplaced, but even so it is important to notice the irony that some of the loudest calls for more lay participation and a different kind of relation between citizens and professions were heard from people, like Christie, Foucault, and Habermas, trained for and occupying sites of considerable professional authority.

The ideal of democratic professionalism flips the radical critique around, jujitsu-style, and argues that if professions can be a buffer between elites and citizens, they can also remove themselves as a buffer; if they can take tasks away from the public and immobilize civic action, they can give these tasks back and activate civic action; if critics of the professions can be self-aware enough to recognize the faults and limits of technocracy, then so can other professionals trained in similar institutions and affected by the same currents of thought.

Democratic professionalism has a thin but important line of scholarly support in democratic theory that helps explain why task sharing rather than task monopoly might come to be desirable to professionals. Canonical democratic theorists Alexis de Tocqueville and John Dewey both stressed the vulnerability of professional domains to legitimacy threats from distant publics. For Tocqueville, lay participation in juries socialized citizens into respect for legal procedures and for the judges who had professional mastery of them. Without this socialization, citizens can see judges as alien figures of questionable authority. The jury “spreads to all classes respect for the thing judged and the idea of right. Remove these two things, and love of independence will be no more than a destructive passion” (Tocqueville 2000: 262).

Dewey suggested a different threat to legitimacy. Without the local knowledge of the communities affected by social problems like crime or joblessness, technocratic experts simply could not adequately solve those problems. Experts in social policy do not remain experts long if their inquiry is not substantially reflexive, if their inquiry is engaged in the problems of specialists rather than the felt problems of the public. “A class of experts is inevitably so removed from common interests as to become a class with private interests and private knowledge, which in social matters is not knowledge at all” (Dewey 1927: 364).⁵

In the Public and Its Problems and elsewhere, Dewey indicated that certain professions could serve as democratic catalysts--intermediaries between a fragmented and under-informed public and a distant and increasingly complex political system. Dewey had in mind journalists, social scientists, and educators--these were his democratic professionals. They were to provide analyses and information but also

encourage reflection about large-scale economic and political events, and most importantly to encourage a form of self-recognition on the part of nascent publics formed around key social problems. The press, for example, was to be a “continuous, systematic and effective revelation of social movements” (1925, 219), something it performed by becoming both more social scientific in its analyses and more aesthetic in its narrative delivery.

Dewey conceived of democratic professionals as task sharers, not political leaders or public organizers or philanthropists who seek to produce social goods for the public. Instead, Dewey’s democratic professionals respond to social problems in a way that facilitates the organization of the public. For example, Dewey saw educators as democratic professionals who can structure learning environments for students to work and deliberate together. In Dewey’s model schools, children are initiated into the participatory and deliberative mode of life characteristic of a task-sharing democracy. Students are encouraged in group practice to place their beliefs in question, rely on evidence and argument for authority, be willing to answer challenges, and be receptive to new perspectives. In other words, Dewey’s democratic educators help structure their schools so that students have a taste for collective self-determination (Dewey 1937, 181).

Democratic professionals seek to open up their domains of authority to lay participants, to share tasks and to share in the construction of the norms that constrain and direct professional action. Along with the restorative justice movement in the criminal justice domain, other contemporary democratic professional movements include the public journalism reform movement and the bioethics movement within medicine (Dzur 2002a and 2002b). In seeking to change key governing norms of practice within criminal

justice, journalism, and medicine, they see their own domains as having positive democratic potential. What these reformers see that radical critics of technocratic professionalism missed is the possibility that professionals might have a hand in reversing trends in democratic contraction and civic immobility. Further, like Tocqueville and Dewey, contemporary reformers see how a merely commercial or merely technocratic professionalism makes their own practices vulnerable to public skepticism.

Democratic professionals are not necessarily idealistic or altruistic. Contemporary social and political theorists building on Dewey's work have pointed to three reasons behind democratic professionalism. One motivation, integrity, is what individual members have to gain from their professions when they are oriented towards public good rather than mere commercial gain. Professions are ways of life that further public purposes and because of this they are able to grant meaning to the work-lives of individual professionals (Sullivan 1995, 6).

Another reason, security, or professional legitimacy, is what professions, as organizations, have to gain from the right sort of relationship with the public. Professional work is particularly vulnerable to public recognition since it is often dependent upon "public, legal acceptance of the value of services offered by the professional" (Sullivan 1995, 30). For example, surgeons are exempt from the criminal justice constraints preventing ordinary citizens from approaching strangers with sharp instruments with invasive intent, but society can also retract such exemptions. As Sullivan writes, the "security and negotiability of the professional's human capital exists...only as part of the public order of civil society. Even more than most other kinds

of property, professional capital depends upon civil society's structure of legal procedures and reasonings" (Sullivan 1995, 145). The authority and autonomy professions have to solve key social problems are based on reciprocal trust, something they earn by performing their tasks with social good, not just profit, in mind. Professionals unreflective about their impact on the public good not only risk loss of integrity, but also risk loss of the legal legitimacy they need to operate.

A third reason is the value of democracy itself: professionals can help preserve democratic control of collective decisions against the pressures of technocratic control. Proponents of democratic professionalism see few signs of the engaged, rational polity that Dewey imagined and worry about the roles contemporary professionals play in the "hierarchical and asymmetrical decision structures of the corporate-bureaucratic state." Instead, they see a political environment marked by citizen apathy and inefficacy in the face of expert systems of social coordination and control (Fischer 1993, 167; Fischer 2000, 30). Technocratic professionals and experts play the role of buffers between citizens and elites by accommodating "the client's needs and problems to the structures of a larger system of domination and control" (Fischer 1993, 169). As the supposed technocratic benefits of efficiency and competence are subjected to increasing scrutiny, however, the virtues of a more democratic professionalism are coming to be recognized by professionals and citizens alike as a barrier against technocratic authority that constrains democratically coordinated social action.

So what explains the democratic professional, the judge, the administrator, the journalist, social scientist, or educator who opposes technocratic authority and who promotes the formation of engaged publics? Professions do this to help promote

democratic citizenship, that is, to uphold the value of democracy. But they facilitate lay participation, too, because it serves the professional's interest in gaining the security and integrity that help the profession itself function and get its job done better.

None of this is to say that democratic professionalism is easy. The ideal is quite complex (Dzur 2002a and 2002b). For example, Dewey expects social scientists to be both competent researchers under the rules of their disciplines and good facilitators of community participation. In the demand that professionals both exercise authority and share it, democratic professionals face serious value trade-offs, as in the case of Tocqueville's judge who knows his solo decision would be more just, yet defers to the jury as a rule because of the political socialization benefits of lay participation. The ideal is also, no doubt, overly ambitious as shown by the hope that the judge, the social scientist, the educator, and others can remedy serious structural deficits in the civic environment. At least democratic professionals within criminal justice are only trying to increase citizen involvement in their specific policy domain, rather than in public decision-making generally, as educators or journalists might, but they certainly face complexities and trade-offs nonetheless.

As democratic *professionals*, they need to retain a certain degree of separate authority and autonomy grounded in both the competence and skill values of the social trustee model, and in the participatory democratic values stressed by radical critics. As *democratic* professionals, they are concerned about the effects of their expertise on the lay public's ability to make self-confident choices both inside and outside their professional domain. Though they retain the authority and at least somewhat privileged voice of people with experience and specialized training, they recognize that they may

know only part of what is important in reaching a decision about a treatment plan, a service, a public policy that relates to their area of expertise. Above all, they seek to open up their domains to other voices, other experiences by mobilizing, actively recruiting, and including lay participants in both decision-making and agenda-setting capacities.

We propose that the concept of democratic professionalism complements the theory of restorative justice by helping to explain why professionals have been so involved in a movement that claims not to need them, by identifying what professionals contribute to the practice of restorative justice, and by suggesting standards to consider in assessing the role such professionals play. The concept of democratic professionalism brings out a significant and meaningful dimension of restorative justice practice lost in most current discussions of restorative justice. Ideally, democratic professionals may also help shape restorative justice in ways that address some of the problems perceived with many earlier efforts at informal justice. On a more practical level, we believe that democratic professionalism characterizes what many restorative justice professionals are doing: re-professionalizing towards a more democratic practice.

Our principal case study examines professionals attempting to share authority with citizens in a restorative justice program in Salt Lake City, Utah, entitled “Passages.” Sparked, in part, by the interest in restorative justice of Salt Lake City’s progressive mayor, Passages was planned and developed in spring 2000, with the first cases heard in fall 2000. The program is described here as it functioned from September 2000 through December 2001, with more recent developments noted as appropriate. We draw upon direct observations of biweekly meetings and other program-related events, interviews with the participating community members and professionals, and written program

descriptions, newspaper accounts, etc. This evidence enables us to begin to identify the meaning that some professionals attribute to community involvement and the professional tasks entailed in facilitating greater community involvement in criminal justice. We do not here discuss the program's impact on the offenders, but focus exclusively on the roles that professionals play vis-à-vis community members.

We realize that other restorative justice programs structure professional and community involvement in different ways and each program depends heavily on unique circumstances, so that this one program should not stand for all of restorative justice. Furthermore, the program was in its infancy, and the roles of professionals and community members have evolved since its early months. To provide comparison with another program that structures professional and citizen roles differently, we offer a much briefer account of a restorative justice program in Vermont.

Restorative Justice in Practice: The Salt Lake City “Passages” Program

Passages has four professional stakeholders (Rolly 2000): the city prosecutor's office, legal defender's office, court, and probation services. The chief City Prosecutor appointed by the new mayor was a galvanizing force in the formation of Passages (Walsh 2002). For its first year this chief prosecutor personally sat on the community board described below. Subsequently an assistant city prosecutor participated in the bi-weekly meetings. The head of the misdemeanor section of the Legal Defender's Association, the second stakeholder, was active at the planning stage and also sat on the board. Invited by the prosecutor, a judge of the state general jurisdiction trial court agreed to participate in the program.⁶ Salt Lake County Division of Criminal Justice Services, the fourth stakeholder, provided a meeting place for the community review panel, therapeutic

courses for offenders participating in Passages, and the critically important time of a part-time case manager who interviewed offenders and wrote up assessments to be considered by the board and was the contact person for both offenders and board members. The program's budgetary needs were minimal, consisting of a part-time salary for the case-manager and seats in therapeutic courses; the public defender and city prosecutor volunteered their services at the after-hours meetings.

The participating judge referred cases to Passages at the time of arraignment or pre-trial hearing at the request of the City Prosecutor's Office.⁷ Defendants were offered a plea in abeyance, which means that a defendant pleads guilty but that the prosecution would ask the court not to enter judgment but dismiss the case once the conditions of the Passages program were completed. Candidates for Passages were given three days after entering the plea in abeyance to contact Salt Lake County Criminal Justice Services to schedule a pre-program evaluation.

Strict guidelines governed the selection of offenders deemed appropriate for Passages. Offenders who had committed felonies were not admitted, nor were those who had a history of violence or a history of failure to appear for court hearings.⁸ Anxious to have the new program succeed, the prosecutor was initially very cautious about the cases referred, even beyond the formal criteria. All but 11 of the 35 cases referred during the observation period were shoplifts or employee thefts, which presumably affected the demographics of the program.

From September 2000 through December 2001 there were 35 participants: 17 men, 18 women; one black, 6 hispanics, 28 non-hispanic whites. The mean age was 24, the median just over 20. Other offenses committed by program participants included

unlawful possession of alcohol, drunk and disorderly, hazing, stealing money from an acquaintance's purse, and stealing luggage from an airport carousel.

The offenders met as a group with the community review panel [CRP or "board"] in a room on a corridor in the Salt Lake County Criminal Justice Services building where therapeutic classes were going on at the same time for others under the supervision of the division. During the observation period, the CRP was evenly divided in number between the city prosecutor, public defender, and case manager and three community members.⁹ Though in theory members of the public could attend the meeting, no one other than the board and the offenders (and occasionally one of their friends or family members) attended during the sixteen months of our observations.¹⁰

A half hour before every meeting the CRP met without the offenders present. In this half hour the case manager introduced new participants by handing out copies of "Passages Needs Assessments," stating the name and date of birth of the offender, the circumstances of the criminal charges, a very brief summary of the individual's personal circumstances (previous criminal offenses, family and marital status, mental and physical health, evidence of substance abuse), and recommended sanctions. The case manager also handed out an agenda for the board meeting with a progress report and update on the other program participants the board would talk with that evening.

When the formal meeting began, the offenders entered the room and were invited, one at a time, to sit at a seat at the CRP table facing the members of the board, while the other offenders remained as an audience. During these board-offender encounters, which usually lasted only a few minutes, board members affirmed the remaining requirements to be met by the offender--such as the number, type, and date of therapeutic classes to be

taken--and usually praised the tasks already completed. Most of the participants seemed contrite and cooperative from the outset. Roughly one third of the total established quite friendly relations with the panel members, exchanging banter or reporting progress with pride. On the other hand, nearly one quarter were more resistant to the program, giving the impression they considered it excessive for the offense they had committed.

Passages was divided into three phases, or periods in which the demands on offenders changed in character. Phase one included an introductory meeting with the CRP in which the offenders discussed written answers they had prepared to a list of questions about the offense, such as how it may have harmed the victim and community. During this phase, which lasted about a month, the offender had to meet every other week with the board at its regularly scheduled time. To complete phase one the offender must have started a set of “skill-building” classes and other board recommendations, such as the completion of a personal budget or a plan to take a GED exam. In addition, the Passages program fee of \$50 had to be paid, though payment of restitution could carry over into the next stage.

Also during phase one the panel met with offenders in private to assess community restitution, a simple application of a formula involving the alleged cost of police time and the number of hours used in dealing with the offense. According to the program guidelines, this restitution did not exceed \$180 (SLC 2000). Restitution to the victim was dealt with case by case.¹¹ One purpose of the community restitution was to bring home the impact that even minor offenses have on the broader community, but a second goal was to bring in financial resources for Passages.¹²

Phase two lasted a minimum of three months and required offenders to meet with the board once a month. During this time the offender attended either victim-offender mediation or, much more commonly, a victim impact panel, in which victims of crimes not committed by Passages participants recounted their experiences as victims. Phase three also took a minimum of two months and required once-a-month meetings to ensure that all program requirements were completed and offenders got in no further trouble. The overwhelming majority of participants successfully completed the program.¹³ The program concluded with a formal graduation ceremony where successful participants were praised for their work by board members and other figures of authority, such as members of the Mayor's office and the judge supervising the program, who then officially dismissed their cases. A month later the party in most cases could also have the record of arrest and charges expunged.¹⁴

Professionals and the meaning of community participation

The Passages program first provides an opportunity to investigate why professionals might want to turn portions of the criminal justice process over to citizens. The 1980s critique of informal justice implies a very skeptical answer. The concerns about expanding state control and reducing formal legal rights as a source of leverage for less powerful groups suggest very undemocratic reasons. These criticisms in their typical form, however, are more deduced from a certain theory of the state than based on empirical evidence (Cain 1988: 55), much less a theory of individual understandings. As discussed above, democratic professionalism does not require altruism and can include elements of self-interest. Recognizing that people are not always candid about or even

fully aware of their motivations, the results of our interviews are consistent with democratic professionalism.

The four professionals gave various reasons for promoting restorative justice, with different emphasis among them. The prosecutor who created the program and was its most visible champion articulated the value of democratic participation for its own sake very explicitly:

I don't think we should underestimate the value of these types of programs for community as well. ... I think you take out of it that, for the first time, that romantic version that you see of your government. The glue that holds our civil society together... If you regionalize it, for example, some communities back east, Vermont or Connecticut, they talked about towns and the council within that town. I think those individuals have a sense of ownership of their community there. Under the model that we have now, we don't have that.

The judge participating in the program expressed similar democratic sentiments:

It seems to me that as part of a community, we live together, and we have to recognize that everything we do affects the other people. We've chosen to live in a society. I think the value is people being willing to take that time and come out and say, "I'm part of this community, and that means I'm part of the problem and I'm gonna be part of the solution as well."

A second reason articulated was the pragmatic assumption evident in both Dewey and restorative justice theory that community members are likely to be more effective than professionals in achieving some goals, in this case getting offenders to take personal responsibility for their crimes and in reintegrating them back into the community (Dzur

and Olson, forthcoming). This comes from the expectation that community members will be more “real people” to the offenders, who will identify more with community members and care more what they think. The attorneys and the case manager involved in Passages all seemed to share this view:

What happens by bringing the laypeople in and trying to get the lawyers and social workers out of the way is that the participants have an opportunity for people who are just like them or closer to them in terms of education and experience without the specialized legal mode that [X] or I bring to it, people who are just like them talking to them in English instead of legalese or social workese.

For better or for worse, my position has a stereotype. [X]’s position has a stereotype. Participants cannot stereotype the community volunteers. Where they have got me and [X] figured out, they haven’t got the other folks figured out, and that’s good for them. It does just enough to make a crack in opening the dialogue with the participants. ... I get locked up in my professionalism. So our perspectives sometimes get skewed. What these citizens offer are fresh perspectives. Look at the experience that they bring. Look at the compassion that they bring. Even though we’re looking at the same phenomenon that’s before us, the same individual, we’re listening to the same stories, their experiences can enliven and enrich that dialogue and open it up in ways that we could not do.

The citizen members are “the heart of the community....Although we [professionals] may have embraced the thought of restorative justice, I still think that often times the people identify more with people of their own kind. We’re still kind of authority figures to them.

One might expect that professionals would be least likely to acknowledge the “security” reason, the value of community involvement for buttressing one’s own professional legitimacy, but two of the Passages professionals did so. In the words of the participating judge:

I believe that the input from the community is critical. We tend to compartmentalize. We say the police arrest people, the courts take care of it, and everybody’s happy about that until they see something they don’t like. Then they blame it on the police, the courts, or the legal profession, or my attorney or something.

The prosecutor noted another way in which he felt community involvement increased the legitimacy of his position. He found that the structure of Passages reduced the tension on those occasions when he had to “switch hats” from being one of the panel members to being more obviously the prosecutor.

Everybody’s dialoging with this person. If the conduct brings them where I have to don my prosecutor’s hat and remind them of the other stark reality which is there, ...the heavy stick of the law, ... when I do have to put that hat on, the contrast isn’t so great because there are others there who are echoing similar ideas.

There was also evidence of the “integrity” reason for democratic professionalism. The professionals seemed to feel that their work with Passages was more meaningful than their typical work. The professionals liked restorative justice’s more holistic, less compartmentalized approach to criminal justice. The case manager in Passages functioned much like a regular probation officer in interviewing all new participants to do the “needs assessment” and being their contact person. Nevertheless, she felt a positive difference between Passages and the rest of her work:

In my role I find myself getting more involved in the community review process than I had anticipated that I would. I thought I would be more of a silent person, but I guess I find myself as feeling that I’m more part of this group. I love interviewing and meeting the people, but what I like the very most is feeling that I’m a part of that whole. I’m part of the solution.

The judge as well noted a similar difference in the feel of her work, which also on the surface was not that different from her work in regular probation cases. After approving the recommendations for pleas in abeyance, she continued to be available to hold non-compliance hearings at the request of the CRP and, if necessary, to impose more serious sanctions than the panel had authority to do. If offenders utterly failed to comply with the requirements of Passages, they were referred back to the court for entry of the conviction and normal sentencing. Nevertheless, the judge felt that the context was very different: “We’re all on the same page. It’s not advocacy in the typical sense. It really changes the relationship of the attorneys with each other and with me....It’s more problem solving.”

Although this interaction that the judge felt to be more meaningful than her typical work occurred in the context of a program involving citizens, it is important to recognize that none of the community members were present for these courtroom occasions. This suggests that some of the “integrity” satisfaction the professionals experienced is more related to changed interactions with offenders and other professionals than to increased community involvement. This also seems true of the defense attorney’s description of his work in the city’s domestic violence court, which also didn’t involve community members other than the direct parties. Cases handled through that court’s restorative justice program were calendared along with those handled conventionally. In the attorney’s words:

In case number 3 on the calendar, everybody is holding hands and saying ‘Kumbaya,’ and on the next one we are tied at the wrist and pounding on each other. The idea is that one case is restorative and the other case is litigation. You need to be able to make that kind of movement back and forth, but it’s not easy.

These comments are a reminder that restorative justice is not only about increasing community involvement in criminal justice, but has other substantive values. The new ways of interacting with victims and offenders lead to new ways of interacting with other professionals, which have both intellectual and affective dimensions. The judge’s comment seems to reflect satisfaction from restorative justice because it is more holistic and less adversarial, while the defense attorney’s seems to reflect satisfaction from new intellectual and emotional challenges raised by the process of restorative justice.

In sum, in different combinations the professionals involved in Passages expressed all the reasons for democratic professionalism discussed above. The citizens' role in the program increased the integrity, the legitimacy, and the efficacy they experienced from their involvement in restorative justice. In addition, however, they received some of their satisfaction from the changed quality of their interaction with offenders and each other. The risk is that the latter source of meaning comes from direct, personal involvement rather than from reducing one's role in the interest of greater community participation. Thus, restorative justice may at times trade off other values against citizen involvement, the signature value of democratic professionalism. We see more such trade-offs and complexities in the tasks Passages professionals perform in the process of engaging citizens in the criminal justice system.

Roles and challenges of democratic professionals

Consistent with democratic professionalism, the professionals involved in Passages undertook the new role of facilitator of community involvement. This role involves several distinct tasks, such as getting community members to participate and attending to the quality of their participation, which is a function of both who the community members are and how the community board meetings run. Quality of lay participation is crucial from the perspective of democratic professionalism, since merely symbolic task sharing—where citizens are present but have no real authority—is worse than no task sharing at all. As professionals, however, they also continue to have substantive value commitments consistent with their training. Balancing these value commitments with the commitment to community involvement is a major challenge for democratic professionals.

Conventional criminal justice today is largely a professionalized arena, and where community members do have roles open to them—as jurors and witnesses—they are “recruited” for them by means of summons and subpoenas. In contrast, democratic professionals seeking community involvement in restorative justice must recruit volunteers for the community review panel and victim impact panel. The Passages case manager gave presentations at a number of community meetings asking for volunteers and was disappointed at the response, so the prosecutor weighed in with personal contacts to solicit others. Five individuals attended at least one CRP meeting, but the number soon dropped to the three regular participants. Two individuals regularly represented victims on the victim impact panel.¹⁵ While this number sufficed for the first sixteen months of the program, all seemed aware that the number needed to increase if the program was to grow without exhausting its volunteers, suggesting that community recruitment is an ongoing task.

Facilitating community involvement as a democratic professional also means being concerned about whether participants are representative of the larger community. In this start-up phase Passages took virtually whomever it could get to volunteer, but the professionals were conscious of the importance of representativeness. As one said:

I think on a practical level, in one sense I can never represent the community wholly, I don't have a board big enough. I don't have the numbers that I would need for that democratic process by which I would have the whole community there. So the next thing that you need to start to achieve is to distill out of it participants who want to participate in fair cross section.

This individual felt generally satisfied with the diversity achieved. Of the six original participants on the board, one community member was Hispanic, and one of the professionals was a first-generation Asian-American.

Another type of diversity is economic. All three community members lived or worked on the traditionally low-income side of Salt Lake, which was true of only some of the offenders in the program, given the predominance of shop-lifting cases. Nevertheless, one of the professionals was not satisfied with the economic diversity of the board:

My concept of community is probably a little socioeconomic-centric. My focus is there is a large segment of the community that is not heard from and usually only interacts with the majority of the community when they're in trouble or when they're using food stamps. ... I'd say that our current panel is a little middle class for my taste, but it's difficult to get people from the very high end of the socioeconomic scale because they're already involved with different panels and so forth. It's difficult to get people on the lower end to get involved because they're busy surviving. ... I would love to see a blue-collar component. I don't know how to go about recruiting them.

Recruitment of volunteers is one area in which professionals' substantive values may compete with their commitment to citizen participation for its own sake. The professionals were able to screen out volunteers with attitudes they felt were inappropriate. The case manager recalled rejecting one individual who expressed interest. She viewed him as having a "personal platform that he wanted to take and use." The man had been imprisoned and won release on appeal, and she feared that "he might be a type of person that may have a bias against the system. We didn't want our program to turn

into one of those things that people are bashing our system and paying it disrespect because it still is the justice system that we have. While it has its flaws, it also serves a purpose.” The screening out of volunteers in this way suggests the limits on how far some professionals are willing to go in relinquishing power.

All three of the regular community participants evidenced restorative values compatible with the program and the professionals’ values. One board member was actively engaged in prison advocacy work. Another was a former youth corrections counselor more recently employed as a school counselor. The third, a long-time participant in neighborhood politics and chair of a community council, had no prior involvement with the criminal justice system, but also took a fairly therapeutic approach to the program. When asked about what kinds of people would be appropriate community representatives for a program like Passages, he commented: “I’d look for people who have an attitude toward wanting to help others. I certainly would eliminate those who just want to punish them. You can’t whip a kid all the time and hope that he’ll keep on right.”

Besides recruiting volunteers, another job of democratic professionals is to educate community members about relevant issues so that they are better able to participate in decision making. The professionals provided two training sessions for the volunteers about restorative justice generally and the specific goals and functioning of Passages. Substantive values also enter training, of course. For the defense attorney the need for education arose primarily around the issue of the offenders’ rights. With the minor level of offenses committed by the Passages participants in its first months, this was not a major issue, but the defense attorney anticipated that if more serious cases were

admitted, he would see it as part of his role to “educate” the community members about “what may happen” and “what the options are” and to ensure that the program is “not just a vigilante committee.” If a problem arose, he was able to handle it on the spot. On one occasion, with the concurrence of the participating prosecutor, he took one of the offenders who had recently received additional charges into the hall briefly to counsel her not to discuss those new charges in front of the panel.

Democratic professionals must constantly negotiate the ambiguity between tasks they should retain and those that could be done by community members and must be vigilant about their own tendencies to take over. One community member admitted to feeling “overwhelmed” by the attorneys initially, but felt much less so after a year on the board. The Salt Lake professionals clearly understood this problem. In the words of the defense attorney:

One of our goals...is to get the lawyers and the social workers out of the way.

In other words, to get a big enough and an experienced enough group of panelists that I can come in and make an introduction, [“M”] can do the case management, but it is literally the citizens who are running the show. The citizens don’t tend to be as forward or as outspoken as the lawyers. So I have to pay particular attention. I have to actively get out of the way of the panel and let them do their job.

Even with conscious effort, however, the right balance is not necessarily struck and must be renegotiated. About six months into the program the defense attorney suggested that the members take turns in initiating the conversation with each different offender. Who will “take” whom began to be decided during the half hour the panel met

before the offenders entered the room. In the course of the conversations, other board members often joined in. The two attorneys on the panel continued to dominate the discussion somewhat throughout the observation period. For example, one or the other of them and usually the defense attorney regularly did the fairly lengthy introduction given each time a new offender joined the program, which explained the consequences of a conviction for even a minor offense and thus the benefits of completing the program. The presentation had the feel of an attorney advising his clients. Nevertheless, in the interview one of the community members suggested that he or she could do the introduction just as well. Discussion and renegotiation of citizen-professional interactions continued after the period of our observation, and the relationships evolved further (see fn. 20).

Democratic professionals spark lay participation, but must be careful that lay people turn to themselves for answers rather than rely on those who encouraged them to participate, trained them, and guided them in the early stages. Giving up control may especially be difficult if professionals find community members do not share the values that they as professionals are committed to defending (Marshall 1988: 38). In practice, there is always a temptation to recruit selectively, to educate about the substance of issues more than the processes for deliberation, and to take over when things aren't going the way they would like. The challenge for democratic professionals is to balance their commitment to public participation and to other core values. From the perspective of democratic professionalism, producing these substantive purposes and ends *for* the public is still too close to the technocratic removal of problems from the ken of lay people.

Alternative Models for Democratic Professionals in Restorative Justice

The structure of Passages, in which professionals sat side-by-side with community members as part of the CRP, makes taking over very easy or, indeed, makes not taking over quite difficult. This structure, however, is not the only way for professionals to organize restorative justice and facilitate community involvement in criminal justice. For purposes of comparison, we present a brief description of “community reparative boards” (CRBs) in the state of Vermont, which differ somewhat from Salt Lake’s approach, and an even briefer note of restorative justice programs with a different concept of community. These alternative models perhaps come closer to ideals of democratic professionalism.

Begun in 1994 and continuing to grow statewide, Vermont’s CRBs are very similar to Passages in concept. A board of five or six citizens meets with offenders and imposes on them sanctions such as community service, victim reparations, and formal or informal apologies.¹⁶ The reasoning behind the Vermont program has been expressly articulated and closely tracks the mix of pragmatism and idealism of democratic professionalism. First is the sense that the conventional correctional sanctions are not the most effective response to nonviolent crimes (Perry and Gorczyk 1997, 32). Second, in efficiency terms, involvement of citizens in dealing with nonviolent crime can “free up scarce court and correctional resources to meet the more urgent priorities of determining justice and providing sanctions and services in cases involving more serious crimes” (Dooley 1995, 33). Third, this division of labor is also characterized in democratic terms, as giving power and responsibility back to citizens. In the words of John Perry, director of planning for the Vermont Department of Corrections, “There's a hunger for local

control over justice. We've done a pretty good job of taking justice away from the local communities. This process allows it to go back to the level that it probably ought to be at” (Stone 2001).

There are several important differences in the role professionals play in Vermont, compared to Salt Lake. Because the Vermont boards operate post-conviction, rather than through a plea in abeyance, they are administered by the state Department of Corrections. Prosecutors and defense attorneys have little involvement with the boards, though obviously the charges prosecutors bring largely determine if offenders will be eligible for reparative rather than conventional probation. Most importantly, no professionals from the Department of Corrections sit on the community boards. Nevertheless, professionals still largely perform the same roles as the Passages case manager and several of the functions that we have identified as part of the task of facilitating community or citizen participation, but some they do more indirectly.

First, they take responsibility for staffing the boards and attending to their representativeness. Except for the much larger scale of the Vermont program, there is little difference in this task. As CRBs have spread across the state, the Department of Corrections has become more interested in the diversity of boards.¹⁷ In a Department of Corrections directive representativeness is defined as follows: A board “should be as diverse a group as is the community in the areas of economic status, gender, age, ethnic background, religious preference” (Vermont Department of Corrections 1997, 11). Additionally, ex-offenders, people who have been crime victims, those with a history of community service or who represent key community institutions, and people with a

commitment to restorative justice principles are seen as adding to the diversity of the board.

The Vermont professionals also juggle their commitment to democratic and other substantive values, but they do so through training and written guidelines rather than through direct participation.¹⁸ “Retributive,” “punitive,” and “offender-based” perspectives are seen as in tension with the value of restoration, and the professionals attempt to correct or modify these perspectives either in pre-board or follow-up training of board members. As Walther and Perry (1997, 12) wrote in a third-year review of the Vermont program, “Some Board members have exhibited punitive activity (at worst), and offender-based goals (at best), rather than restorative, inclusive values. We believe this behavior will change with the pressure of peer reviews and inservice training.”

The Department also tries to guide the boards in the particularly legal value of fairness to the offenders, just as the defense attorney in Passages did. Because the Vermont program is post-conviction, its fairness issues mainly relate to the nature of the sanction. A “program directive” has established standards of fairness, equity, and relevance for the tasks mandated for the offender by the board.¹⁹

Ironically, when a program has become as institutionalized as Vermont’s has, democratic professionalism may also require attention to professionalizing tendencies among board members themselves. Professionalization has been of increasing concern in Vermont, where board members have now organized email networks and annual conferences. Some boards have asked to be paid, not just for the money but also for the status a paid position conveys to those offenders who might challenge the authority of unpaid volunteers. In reaction to these developments both the Commissioner of

Corrections and the department's director of planning expressed in interviews an interest in discouraging "little judges" and in maintaining the informality of boards by "building inefficiency into the system," perhaps by making service on reparative boards paid but also mandatory and time-limited.

Although both the Vermont and Salt Lake professionals recruit and guide community volunteers, the more "behind the scenes" approach in Vermont seems to have some advantages from the perspective of democratic professionalism over the more "hands-on" approach in Salt Lake City. Restorative justice has substantive values and goals, apart from the democratic goal of more citizen involvement, including support for victims, fair treatment of offenders, and more understanding and cooperative relationships among all parties. The Vermont approach allows professionals to pursue these other values through guidelines and training at less risk to their commitment to democratic participation, although possibly with some loss of the sense of meaning arising from richer personal interactions.²⁰

The tasks for democratic professionals of recruiting participants and monitoring diversity and quality of participation are functions of the general approach to restorative justice shared by both Salt Lake and Vermont. This is a "panel" model that attempts to incorporate community involvement through members of the general public who have no direct connection to the particular offenders or offenses at hand. An alternative approach are "stakeholder" models, such as "family group conferences" (Bazemore 1998), in which "the community" consists of intimate acquaintances of the victim and offender. Restorative justice professionals may find themselves with different tasks and challenges in such programs.

Some restorative justice advocates have criticized the “panel” approach for substituting members of the general public for more direct stakeholders (Bazemore 1998; Bazemore and Umbreit 2001: 4). Even the direct victims of the offenses may be absent, as is largely the case in both the Salt Lake and Vermont programs. The original design of Passages anticipated victim-offender mediations as an important part of the program, to be conducted by the case manager, a trained mediator. In fact, however, only three such mediations took place in Passages’ early months, and victims were much less involved than the program’s formal goals anticipated. The main reason is that very few of the offenses had individual victims, and only one commercial victim in a shoplifting or employee theft case agreed to participate in mediation.²¹ The individuals on the victim impact panel, which offenders attended unless they had a mediation with their direct victims, spoke poignantly of their experiences and seemed to touch at least some of the Passages participants, despite the differences between the crimes they committed and those the victims experienced, but the potential for a transformative effect on the offender is surely less than in victim-offender mediation.

The Vermont reparative probation program clearly seeks to have victims attend the board meetings. Guidelines provide suggestions for attending to them, such as “Greet Victim/affected parties respectfully and inclusively,” “Assure that the victim is not interrupted while telling her/his story,” “Validate victim’s feelings and questions,” “Assure that offender answers all questions that victim asks of him/her” (Vermont Department of Corrections 1999). Nevertheless, relatively few victims have participated. Two sources report victims attending board meetings in eleven percent and eighteen

percent of the cases with identified victims.²² The lack of victim participation was a point of self-criticism in both Vermont and Salt Lake.²³

In programs where victims and other direct stakeholders are present, professionals often find themselves playing another new role, that of mediator. The growth of mediation between victim and offender, sometimes also including concerned community members on both sides, has spawned protracted debate over issues arising from this new role, including appropriate credentials and training, tensions between maintaining neutrality and promoting substantive justice, and appropriate cases for mediation (McGillis 1997: 67-72; Shook and Milner 1993). Democratic professionals in such programs may not have to worry about recruiting volunteers or whether those volunteers are somehow representative of a larger community, but they still face the challenge of enabling and directing lay participation without dominating it.

Learning about Restorative Justice Theory through Democratic Professionalism.

Despite its frequent assumptions to the contrary, we conclude that restorative justice needs the involvement of criminal justice professionals for several different reasons. First, for the foreseeable future, restorative justice is unlikely to happen without them. Restorative justice theory tends to assume that restorative justice programs give back something the community wants, namely direct, hands-on, control of criminal justice decision making. What we see in practice, however, is a different story. Despite reasonable initial recruitment efforts, Passages found only three steady volunteers and thus went through its first sixteen months with the same three citizens representing the entire community. Even in Vermont, where the community boards have now spread statewide and involve some hundreds of volunteers, citizen involvement was “seeded” in

a top-down fashion by professionals of the Department of Corrections. In no way did reparative probation as a program idea emerge from the bottom up, through social movement or normal politics, even in a state with a long history of local self-government and participatory politics.

A restorative justice “true believer” may agree that such involvement is needed at the *outset* of restorative justice programs, but once that stage has passed, the community will take back what is deservedly theirs. We see it differently. Generating sufficient citizen involvement in most communities is something that may involve considerable long-term social change to accomplish, even with the concerted efforts of democratic professionals. At a time when it is hard for even the most devoted local party activist to get fifty percent of a neighborhood to turn out to vote in a presidential election year--even given a stable party system, with established political networks at the national, state, and local levels--we wonder whether “giving back” the criminal justice system is as easy as it sounds.

Another questionable assumption is that all the tasks to be done can be done by volunteers. Even beyond a possible transition stage to restorative justice, we see evidence that restorative justice programs usher in new tasks and new burdens for some particular group to master. Because tasks like mediation and facilitation of community involvement are different but no less complex and burdensome than traditional criminal justice tasks, it seems sociologically sound to suppose that some professional involvement will likely be a long-term and not temporary phenomenon.

The role of facilitator also includes finding political support for community involvement in hitherto professionally dominated institutions. Just as Feeley and Rubin

(1998) found with respect to prisons, reformers could not conceivably transform the criminal justice system towards restorative justice without the support and cooperation of some of the professionals now in charge to provide legitimacy with political decision makers.

Not only are there new tasks to perform that may require training and time commitments, there are also traditional tasks and values associated with criminal justice, with which professionals are particularly associated, that rival the tasks and values of restorative justice. Restorative justice theory notwithstanding, it is not clear that traditional tasks like appraising offenders and ensuring procedural fairness should disappear or be done any less professionally than currently (Luna 2001; Clear and Karp 1998; Cain 1988, 83). Because the value of holistic restorative justice practices does not “trump” all the values of specialized conventional justice, it is very likely that some criminal justice tasks will be always be guided by traditional norms whether or not these tasks are performed directly by professionals, as in Salt Lake, or guided through policies and training, as in Vermont.

Both professionals and community volunteers can encounter something of a “two-hats” problem. Because they want to uphold traditional *as well as* restorative values, they sometimes have to perform contradictory tasks. In Salt Lake, for example, the professionals involved tried to represent themselves in offender-board dialogue as both community members and professionals. As a community member they “relate,” but as professionals they introduce the program to new offenders in expert terms like “class B” offenses.” In Vermont we observed as a board member evoked her status as a member of the community by saying she “lived on Elm Avenue and ran a nearby market,” but who

also clearly followed precedents of board practice and the procedural guidelines set out for board-offender dialogue. Both hats are needed, but they add to the complexity of restorative justice roles: community members do not just act the way they would in their family room, but follow rules; professionals do not just act the way they would in court, but follow the new rules of restorative justice processes.

Democratic professionals explicitly seek to balance these competing values of rule-following versus holistic engagement and of fairness to individuals versus responsiveness to community. The exact role they play, e.g., how much time a democratic professional needs to spend in the foreground, will vary with the context. A possible reason for Vermont's adoption of a program structure more closely adhering to democratic professionalism is the different political culture of the states. The structure of the Vermont community reparative boards may reflect the state's history of town-meeting participation, a history that gave the department of corrections professionals confidence in the possibilities of community involvement in criminal justice. Moreover, that the Salt Lake offenders are under a plea in abeyance increased the need for the Salt Lake professionals to be available to resume their unique role of enforcing law or protecting rights. In short, we see democratic professionalism as conducive to the development of restorative justice. Its exact form may differ with the social and political context, but some organizational configurations advantage certain values over others.

Restorative Justice, Democratic Professionalism and Informal Justice

Can incorporating democratic professionalism into the theory and practice of restorative justice programs avoid the problems raised by critics of informal justice? A full assessment of restorative justice as an improvement on the informal justice programs

of the 1970s and 1980s is beyond the scope of this paper. An overall assessment requires attention to offenders and victims, of course, not just to the role of professionals.²⁴ In addition, attention is needed to the differences among the wide range of restorative justice programs in this country and elsewhere. Especially programs like those in Salt Lake and Vermont, where direct victims are usually absent, raise questions about what exactly is being “restored” and how much they differ from other rehabilitative programs that attempt to make offenders less self-centered. Nevertheless, we feel our study speaks to some aspects of the concerns about informal justice.

To the extent that Passages, with its three “phases” and mandatory classes and board meetings, is quite an elaborate program for sometimes very minor offenses, skepticism is warranted that its version of restorative justice is, once again, an extension of state control. For this not to be true, the validity of community involvement and the respect for individual rights are both crucial. The role of democratic professionals is important on both fronts. As democratic *professionals*, those involved in restorative justice are responsible for ensuring that the core legal value of fairness to offenders is not sacrificed. As *democratic* professionals, they are responsible for nurturing citizen participation in the process.

The theory of democratic professionalism and our empirical observations suggest that non-altruistic reasons help support this second goal. The professionals felt that working with the citizens made their work more meaningful and more legitimate. The progress the community members made in shouldering a fair share of the conversation with offenders and even in questioning the professionals’ dominance in that process

suggests that conscious attention to these issues produces more valid community involvement.

If criminal justice professionals interested in restorative justice are to become democratic professionals, new forms of training and standards of accountability are needed. Training in the facilitation of community participation (see Lopez 1992) needs to become as common as mediation training now is. New standards of accountability clearly need to be worked out for assessing how well democratic professionals accomplish the array of new tasks, how well they are able to manage tensions between competing values, and how agile they are at stepping in and out of the foreground of public action.

Under democratic professionalism accountability has to focus not on current professional standards of performance of defined tasks, but on citizen satisfaction with crime reduction and other improvements in their community (Karp and Clear 2000). At worst this raises the specter of public relations activity, on the one hand, and technocratic professionalism, on the other. Democratic professionals' imperative of avoiding technocratic tendencies, however, makes them quite sensitive to the problems raised by such critics. Moreover, our analysis has been that they need to be held accountable *both* to a standard of facilitating active citizenship in the public sphere as well as to the standard of protecting rights and procedural fairness, presumably through the courts. If they are so accountable, then we believe restorative justice programs can avoid a number of the problems raised by critics of informal justice.

Of course, when examining accountability to citizens, it is not always easy to determine where the state ends and the public sphere begins. While we have presented a

more optimistic vision of the professional-dominated realm of governmentality than Foucaultians such as Pavlich (1996) and Fitzpatrick (1988), we join them in holding that state and community control are not clearly delineated. In the restorative justice program we have observed, the relative “competencies, knowledges, and privileges” of professionals and community members are being gradually negotiated and defined through practice.

To further examine these questions theoretically and empirically, we urge the community of law and society scholars to return to the study of informal justice, including the burgeoning restorative justice programs. The practical choices democratic professionals are currently making in contexts like those examined here will also contribute to the further development of the theory of democratic professionalism.

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¹ See Van Ness and Strong (1997) for a brief history of restorative justice in North America and Braithwaite (2002) for a more global history of restorative justice.

² Such “private justice” was not always peaceful, however, and sometimes did include blood revenge. See Miller (1990, chapters 6-8).

³ Parsons’ emphasis on the normative orientation of professions towards socially responsible ends rather than merely pecuniary ends is a standard account (see, e.g., Friedson 1970, xvii; Friedson 1994, 10; Hughes 1963, 655; Sullivan 1995, 2).

⁴ As Brint puts this point: “Community was understood as the aggregation of socially important functions, not as some more general kinship.... Each profession was understood to work on a single important sphere of social life—such as conflict resolution, health, design, education” (1994, 7).

⁵ See Dorf and Sabel (1998) for further discussion of the legitimacy-granting effects of bringing local knowledges into expert decision making. Rooted in Dewey’s pragmatism, their “democratic experimentalism” has close similarities to the approach we advocate here. We thank John Braithwaite for drawing our attention to their work.

⁶ In the summer of 2002 the city of Salt Lake created its own limited jurisdiction “Justice Court,” as provided by state law. Subsequently, the types of cases referred to Passages came from this new city court rather than from the state district court.

⁷ Usually the offenders were identified at the time of arraignment and entered the plea without consulting counsel. Willingness to accept responsibility for the act was one of the conditions for being considered a good candidate for Passages.

⁸ To be eligible, offenders also had to have a stable address and be either residents of Salt Lake County or have committed the crime within Salt Lake City.

⁹ Backgrounds of the community members are discussed below at page 35.

¹⁰ This may be because it was a new program and not well advertised or widely known and also perhaps because it was housed in the slightly forbidding Criminal Justice Services building.

¹¹ Many offenders owed no victim restitution through Passages because the merchandise was recovered in virtually all the shoplift cases. The businesses, however, also have the right to pursue offenders for civil damages under Utah law.

¹² In public presentations about the program, the prosecutor stressed its cost effectiveness, always an important political message in Utah. He compared its costs to that of trying defendants, even though it is unclear how many Passages participants would be likely to have gone to trial.

¹³ Only two of the thirty-five were referred back to court and one participant died, but several were still in progress at the end of our observation period. Beyond the thirty-five counted, four more offenders had been referred to Passages, but did not show up for their initial appointment with the case manager and thus presumably were sentenced by the judge. During the early period in which we observed it, Passages had made no provision for tracking offender recidivism.

¹⁴ As provided in Utah Code Annotated 77-18-11 (1953). If done correctly, expungement should be absolute, but the process is quite cumbersome, and some offenders may fail to contact each of the necessary agencies to do it completely.

¹⁵ One was a home-owner whose house had been repeatedly broken into and who narrowly missed being the victim of a drive-by shooting. The other was a woman whose experiences with her husband, whose substance abuse problems had repeatedly gotten him in trouble with the law, demonstrated offenders' victimization of their own family members.

¹⁶ The Vermont program has been in operation long enough that there are several published sources about it (see Karp [2001 and 2002] and works cited in our discussion). In addition, one of the authors has interviewed Vermont state officials about the program and observed one board meeting.

¹⁷ The initial selection of board members was done using a very informal word of mouth process. Department of Corrections staff asked community leaders to nominate people for the boards. Further

recruitment has been done through word-of-mouth and some newspaper advertising and reporting. Because of the recruitment process CRBs initially slightly over-represented people who had had some connection to the criminal justice system, such as retired case-managers or previous volunteers. CRB membership clearly favors those with the time and income security for community service.

¹⁸ The Department of Corrections articulates five steps written in training materials as semi-formal guidelines: 1) victims describe the impact of the offender's behavior; 2) offenders make amends to victims and affected parties; 3) offenders make amends to the community; 4) offenders demonstrate healthy behaviors and learn ways to avoid re-offending; 5) the community offers reintegration.

¹⁹ Fairness means that tasks should be "scheduled and assigned so as to consider the offender's basic responsibility to work and provide for family, and not unduly interfere with these responsibilities." Equity means that tasks should be modulated to accord in severity with the offense committed and that they should be applied consistently to those who have committed the same offense. Relevance means that tasks should be "based on the nature of the act itself" and "be closely associated to and right the specific harm caused" (Vermont Department of Corrections 1997, 9).

²⁰ Indeed, the Passages program seemed to be moving somewhat closer to the Vermont approach. The program was still very much in flux at the time we observed it, and the professional roles were changing as a result of explicit discussion and personnel turnover. By the summer of 2002 two of the original community members had left the board and other new ones were recruited to sustain the program. The attorneys who had replaced the two founders no longer sat at the front table with the community members, but off on the side. The new attorneys seemed to be backing away from trying to interact informally with offenders, as if they were no different from the community members.

²¹ The second mediation involved a shoplifter who got into a physical altercation with a female security guard, who agreed to participate in mediation. The third involved a young man who terrified his party host's neighbors and trampled their plants as he mistook their house for the host's and tried to get in while very drunk. Even in the four employee theft cases, where there was a personal relationship between the offender and commercial victim, the retailers simply fired the employees and declined to mediate.

²² The eighteen percent figure comes from a personal communication from Lynne Walther of the Vermont Department of Corrections (April 3, 2002) and the eleven percent from Karp's study (2001).

²³ On Vermont, see Walther and Perry (1997: 26-27). In Salt Lake some of the professionals and community board members were unhappy about the lack of mediations with direct victims and felt the prosecutor was being too cautious about the types of cases referred.

²⁴ Considerable general evaluative research on restorative justice has been done. See, for example, Umbreit, Coates, and Roberts (2000), Umbreit (2001), and Coates (1990).